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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/732,821	12/10/2003	Richard J. Hantke	KCX-772 (20000)	6793
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DORITY & MANNING, P.A. POST OFFICE BOX 1449 GREENVILLE, SC 29602-1449			EXAMINER HAND, MELANIE JO	
			ART UNIT	PAPER NUMBER
			3761	
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			08/13/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/732,821

Applicant(s)

HANTKE ET AL.

Examiner

Melanie J. Hand

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 May 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 6-15, 17-19 and 24-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 6-15, 17-19, 24-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

Applicant's arguments filed May 14, 2007 have been fully considered but they are not persuasive.

With respect to applicant's arguments regarding the rejections over Mizutani: Applicant argues that the claimed properties of seal strength and noise level are not inherently taught by Mizutani. While the Office agrees that noise level is dictated by many different variables, and seal strength is a function of the sealing means and not the material, the office directs applicant's attention to Col. 10, lines 13-16 of Mizutani where Mizutani teaches that the sealing means is formed by fusing the side edges of the packaging material to each other. Therefore, in this particular instance, the sealing means is not a separate entity but is in fact comprised of the packaging material and thus the sealing strength and noise level are inherently taught by Mizutani. Applicant's own specification states on Page 8, lines 3-7 that the opening flap seals are produced by a heat roll procedure, identical to the opening flap sealing procedure of Mizutani, and the materials disclosed and the material taught by Mizutani are substantially identical. Thus Mizutani does inherently teach the seal strength and noise level claimed. The rejection of claims 1-3, 7-15, 17-19 and 24-30 under 35 U.S.C. 102 or alternatively, 35 U.S.C. 103 are maintained herein.

Applicant did not address the rejection of claim 6 over Mizutani in view of Luizzi. The rejection is therefore maintained. Applicant is advised that failure to address a ground of rejection in any subsequent Office action will constitute a non-compliant amendment.

Claim Rejections - 35 USC § 102/103

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-3, 7-15, 17-19 and 24-30 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Mizutani et al ('160).

With respect to **Claims 1, 11, 12, 15, 17, 24-26, 28 and 29**: Mizutani teaches package 1 comprised of wrapper material 10 and absorbent article 2. (Fig. 1) (Col. 8, lines 62-65) Mizutani teaches that wrapper material 10 is folded into a pouch by folding front portion 2c back onto central portion 2b and then rear portion 2d is folded over front portion 2c so as to overlay portion 2c, at which point confronting faces of each side region 10d of wrapper material 10 are fused to form sealed portions 25 and the adhesive portion of tape tab 23 attached to opening flap 10c is adhered to face 10b. (Fig. 2) (Col. 10, lines 3-16) Mizutani teaches that package member 10 is a laminate composite nonwoven fabric. (Col. 5, lines 26,27) Mizutani teaches that the fused faces of packaging material 10 are peeled from one another at sealed portions 25 for opening and resealing upon disposal. (Col. 10, lines 64,65) Mizutani teaches a decibel level upon unsealing of portions 25 of 55 db. (Col. 12, line 1).

Art Unit: 3761

Mizutani does not teach a seal strength for sealed portions 25, or an opening noise level of less than about 60 db. However, since Mizutani teaches a packaging material that is substantially identical to the claimed wrapper material (i.e. comprised of thermoplastic material), the prior art device of Mizutani inherently possesses a seal strength of between about 20-60 gf and an opening noise level of less than about 60 db. The limitation regarding the method in which the claimed ranges are obtained is given little patentable weight, as there is not sufficient proof that the device of Mizutani would yield a different decibel level when subjected to the claimed test method. The burden is herein upon applicant to show that the prior art packaging material taught by Mizutani does not yield the claimed sealing strength or decibel level.

With respect to **Claim 2**: As stated with respect to Claim 1, Mizutani teaches sealed portions 25 wherein confronting lateral edges are sealed together.

With respect to **Claims 3, 27**: As stated with respect to Claim 1, Mizutani teaches tape tab 23 with faces 23a and 23b extending from edge 10c, wherein 23a is adhered to portion 10b and 23b protruding from end edge 10c is coated so as to be releasably attachable to opening flap 2c. (Col. 8, line 66, 67, Col. 9, lines 1-9).

With respect to **Claim 7**: As stated with respect to Claim 1, packaging material 10 is comprised of a composite nonwoven wherein the inner face layer 12, outer face layer 13 and intermediate layer 11 are all comprised of various nonwoven films. When packaging member 10 is folded into the pouch formation, the inner face layer 12 forms an interior of package member 10 and the outer nonwoven face layer 13 will still be exposed. Although nonwovens are substantially liquid-

Art Unit: 3761

impermeable, they are also substantially vapor permeable. Edge portions 10d taught by Mizutani are comprised of all layers of the composite laminate nonwoven.

With respect to **Claim 8**: Please see the rejection of claims 4 and 5 above. Since Mizutani teaches a laminate and does not explicitly teach differing dimensions for each of layers 11, 12 and 13, Examiner is concluding that the length of inner layer 12 is equal to the length of outer layer 13.

With respect to **Claim 9**: Mizutani teaches that the laminate nonwoven material 10 is highly resistant to water-permeation. (Col. 5, lines 30-33).

With respect to **Claim 10**: Mizutani teaches that the packaging material is comprised of thermoplastic fibers, which are known in the art to be vapor-permeable.

With respect to **Claim 13**: Referring to Fig. 1, Mizutani teaches fold axes that are viewed upon folding of portions 2c and 2d toward the opposing fold axis.

With respect to **Claim 14**: Mizutani teaches edge 10c of portion 2c that is unsealed except for the portions which are lateral edges that are sealed at regions 25. (Fig. 2)

With respect to **Claim 18**: Mizutani teaches that edge portions 10d are sealed using a heat roll. (Col. 10, lines 13-16).

With respect to **Claim 19**: Sealed portions 25 are present on both lateral sides of package 10 when in folded position.

With respect to **Claim 30**: Each lateral side 10d of packaging material 10 defines sealing regions 25.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mizutani et al ('160) in view of Luizzi et al (U.S. Patent Application Publication No. 2003/0199842).

With respect to **Claim 6**: Mizutani does not teach a material having a pattern of holes defined therethrough wherein a nonwoven material is exposed by said holes. Luizzi teaches an absorbent article having a tape tab at one longitudinal end for retaining a soiled article in a folded configuration. The article is comprised of a backsheet of nonwoven material and a cover sheet comprised of a porous (i.e. vapor permeable) or nonporous nonwoven film. ('842, ¶0032) Therefore Luizzi teaches that a porous film may be substituted for a regular nonwoven for use in a topsheet or cover material, and a porous film by its nature possesses a pattern of holes. Thus it would be obvious to one of ordinary skill in the art to modify the device of Mizutani so as to have a nonwoven film substituted with a porous film as taught by Luizzi wherein the nonwoven material of the wrapper material taught by the combined teaching of Mizutani and Luizzi is exposed by the holes.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie J. Hand whose telephone number is 571-272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Melanie J Hand
Examiner
Art Unit 3761

Application/Control Number: 10/732,821
Art Unit: 3761

Page 8

July 17, 2007